

# Admiralty Law and Insurance Update



**Dennis Nixon**  
**University of Rhode Island**  
**2013 RVOC Meeting**  
**Solomons, Maryland**  
**April 23, 2013**



# Outline

- World Insurance Market & Claims
- UNOLS Fleet Insurance Statistics
- Relevant Vessel Casualties
- Relevant Legal Decisions
- Safety Issues
- Conclusions



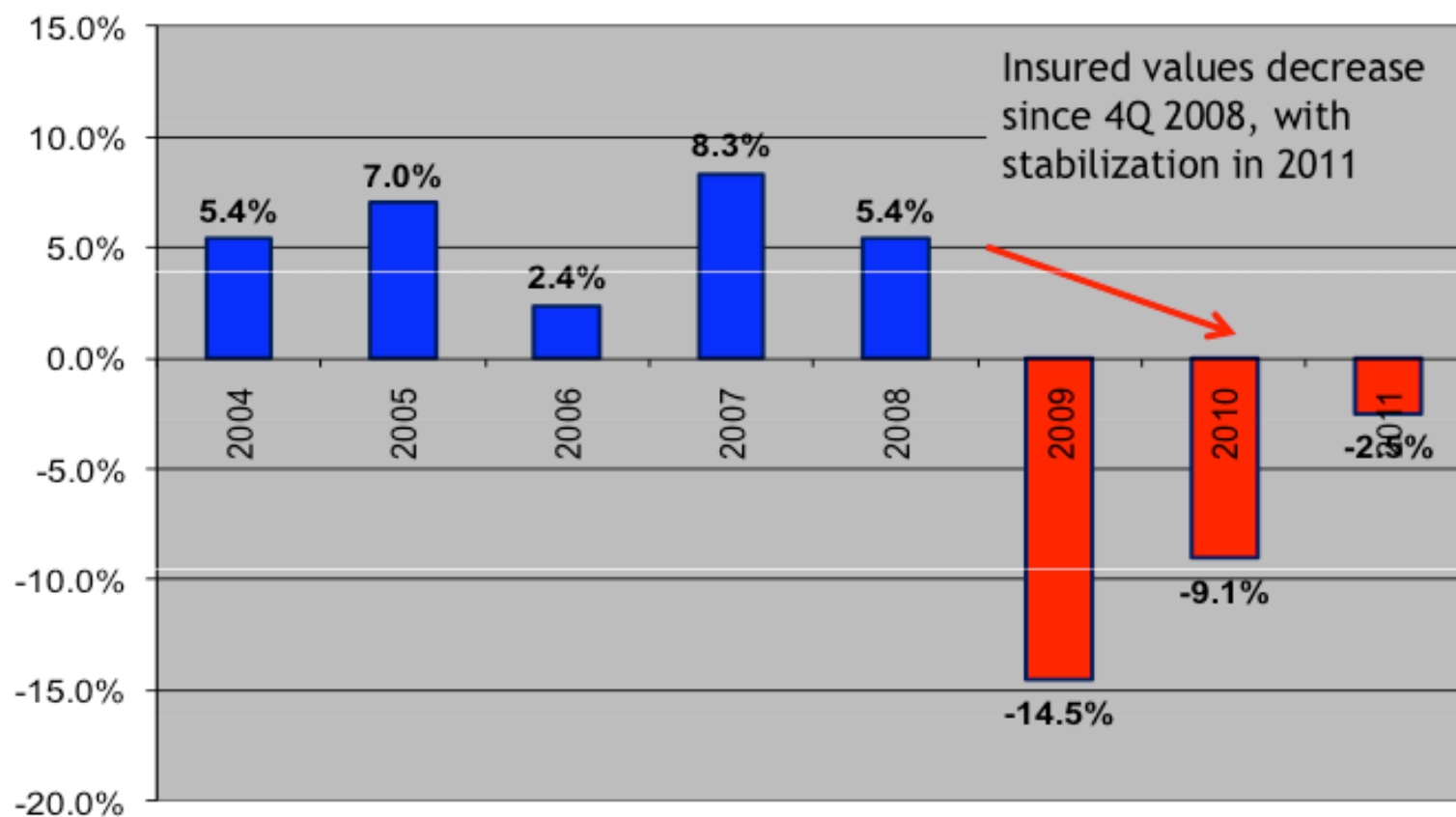
# Overview of the World Insurance Market & Claims

2013 RVOC Meeting, Solomons , Maryland

## Change in insured values on renewed vessels, by year of renewal



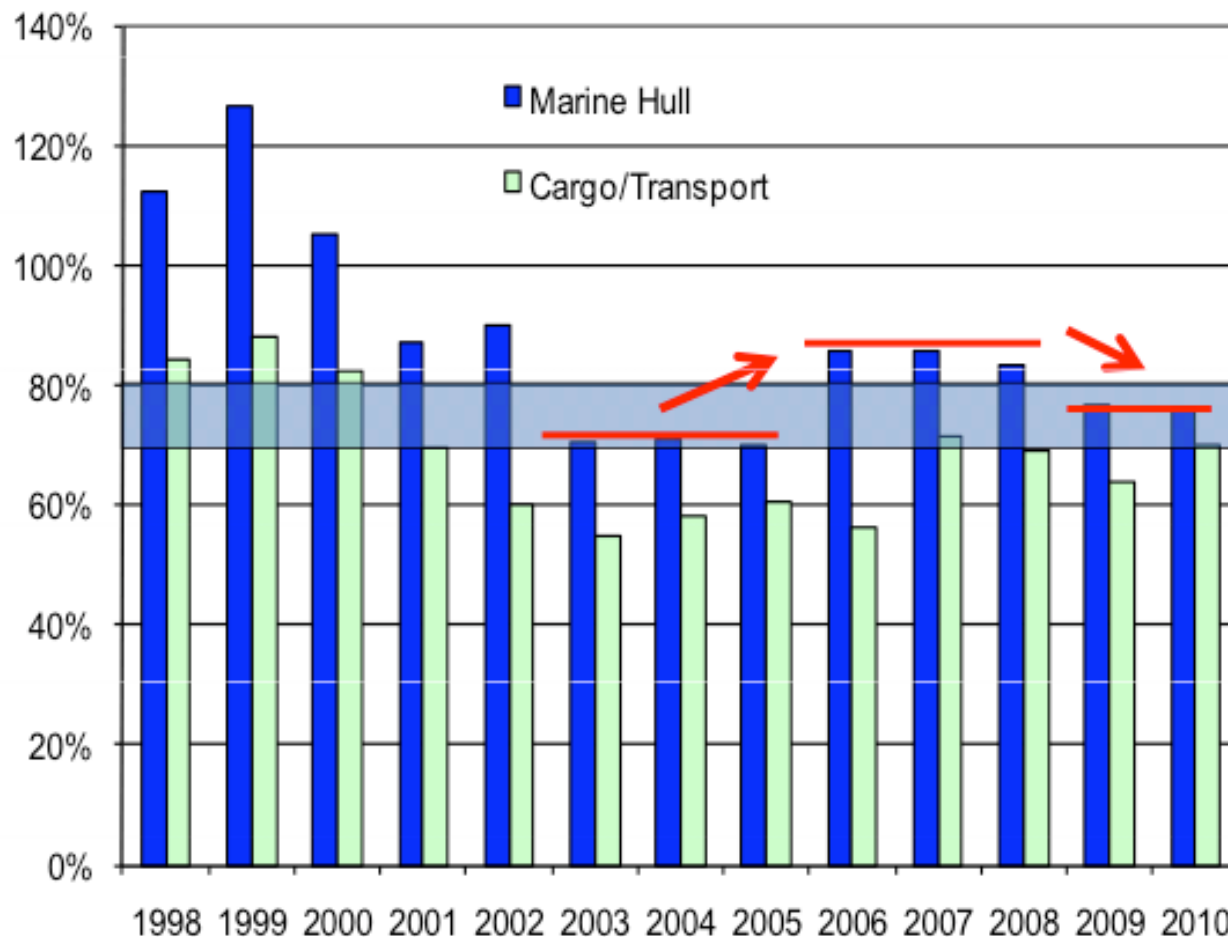
(= insured value on renewal / insured value previous year)



Source: Cefor, The Nordic Association of Marine Insurers, figures as of 30 June 2011

# Marine Hull and Cargo/Transport

**Gross\* Ultimate Loss Ratio, U/W Years 1998 to 2010**



## Hull - 2009/2010:

Some improvement compared to peak years 2006 to 2008.

But: Claim cost and loss ratios **stabilize at high levels.**

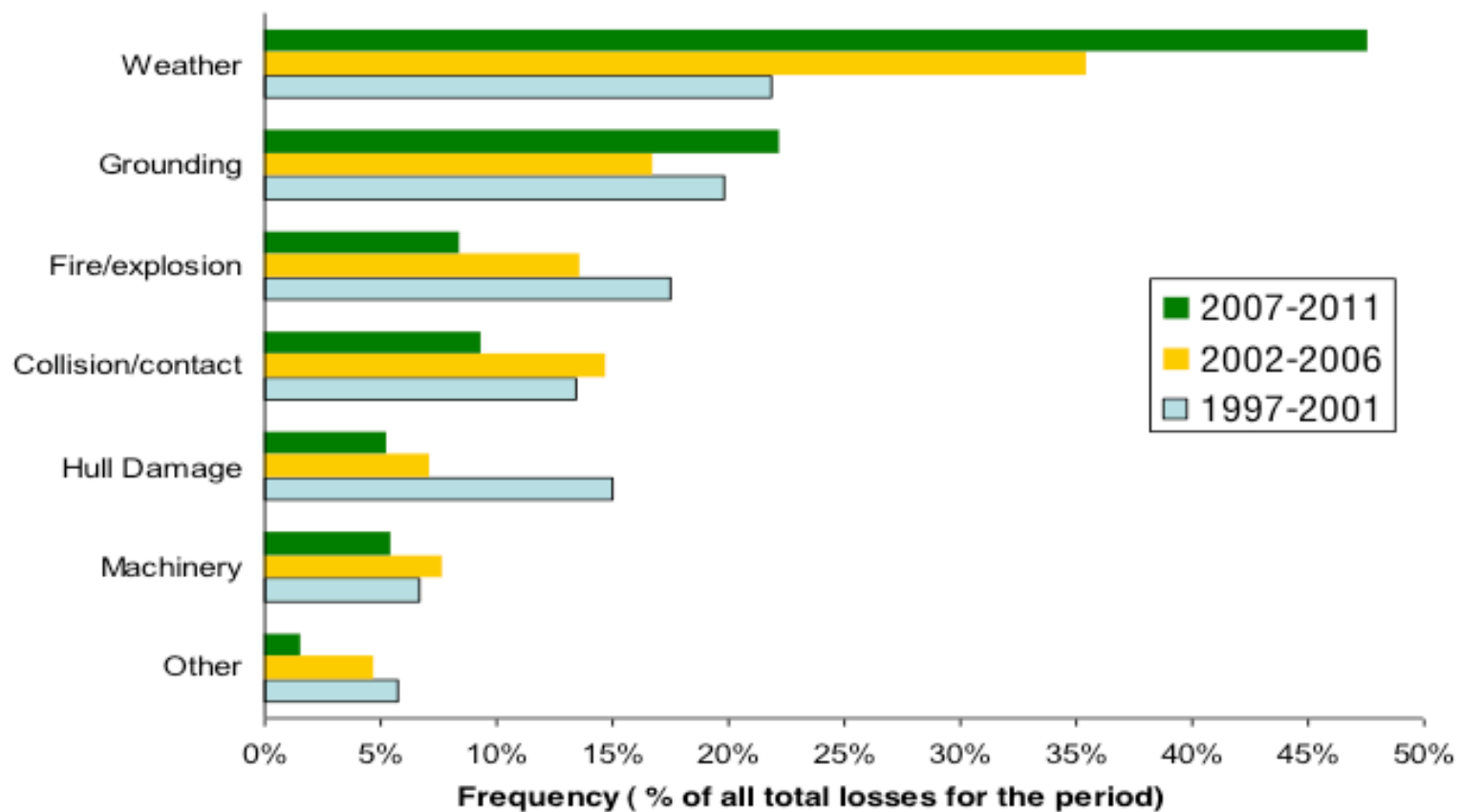
No technical profit.

\* Technical break even: gross loss ratio does not exceed 100% minus the expense ratio (usually 20%-30% acquisition cost, capital cost, management expenses)

## Total Losses 1997 – 2011 By Cause, All Vessel Type (vessels > 500 GT)

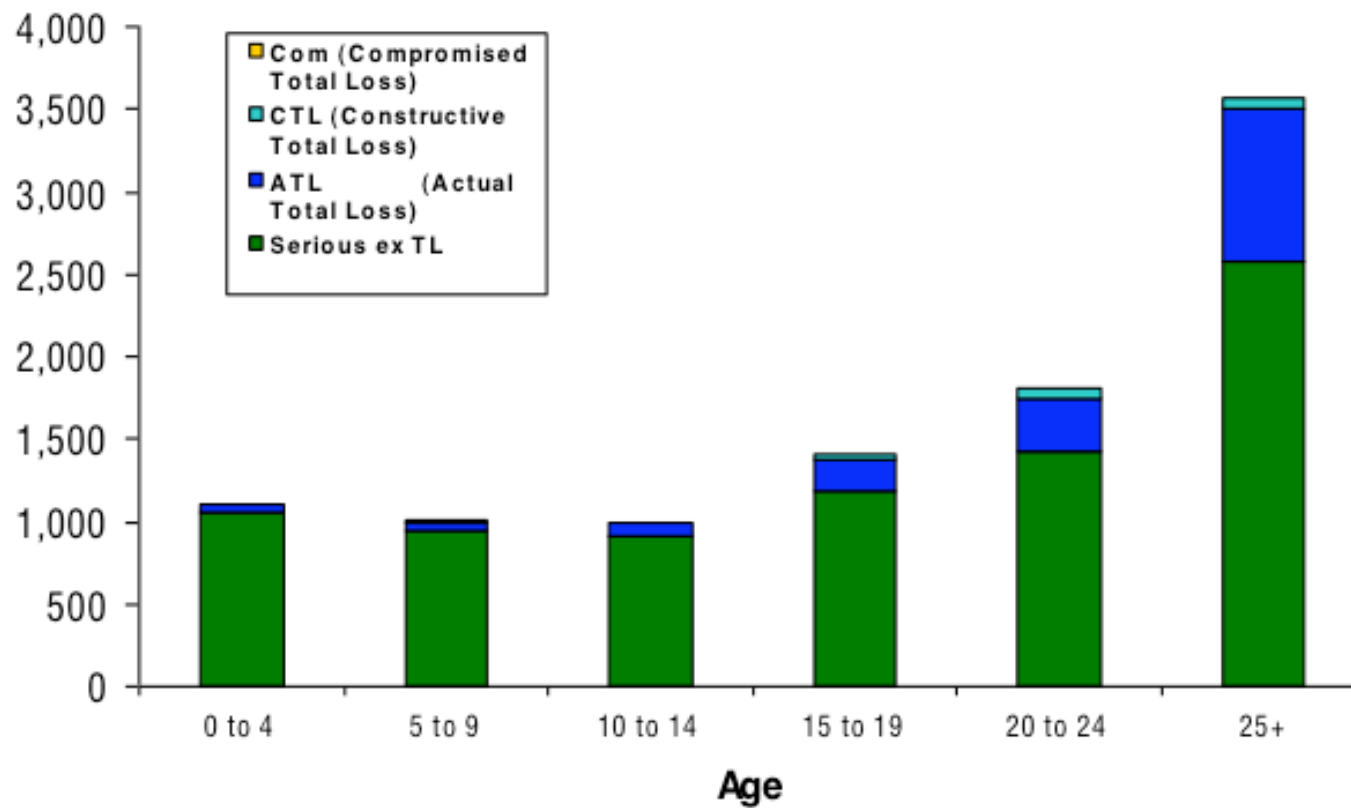


IUMI  
International Union of  
Marine Insurance



Source: LMIU, total losses as reported by Lloyds List

## Serious and Total Losses 1996 - 2011 By age (vessels > 500 GT)



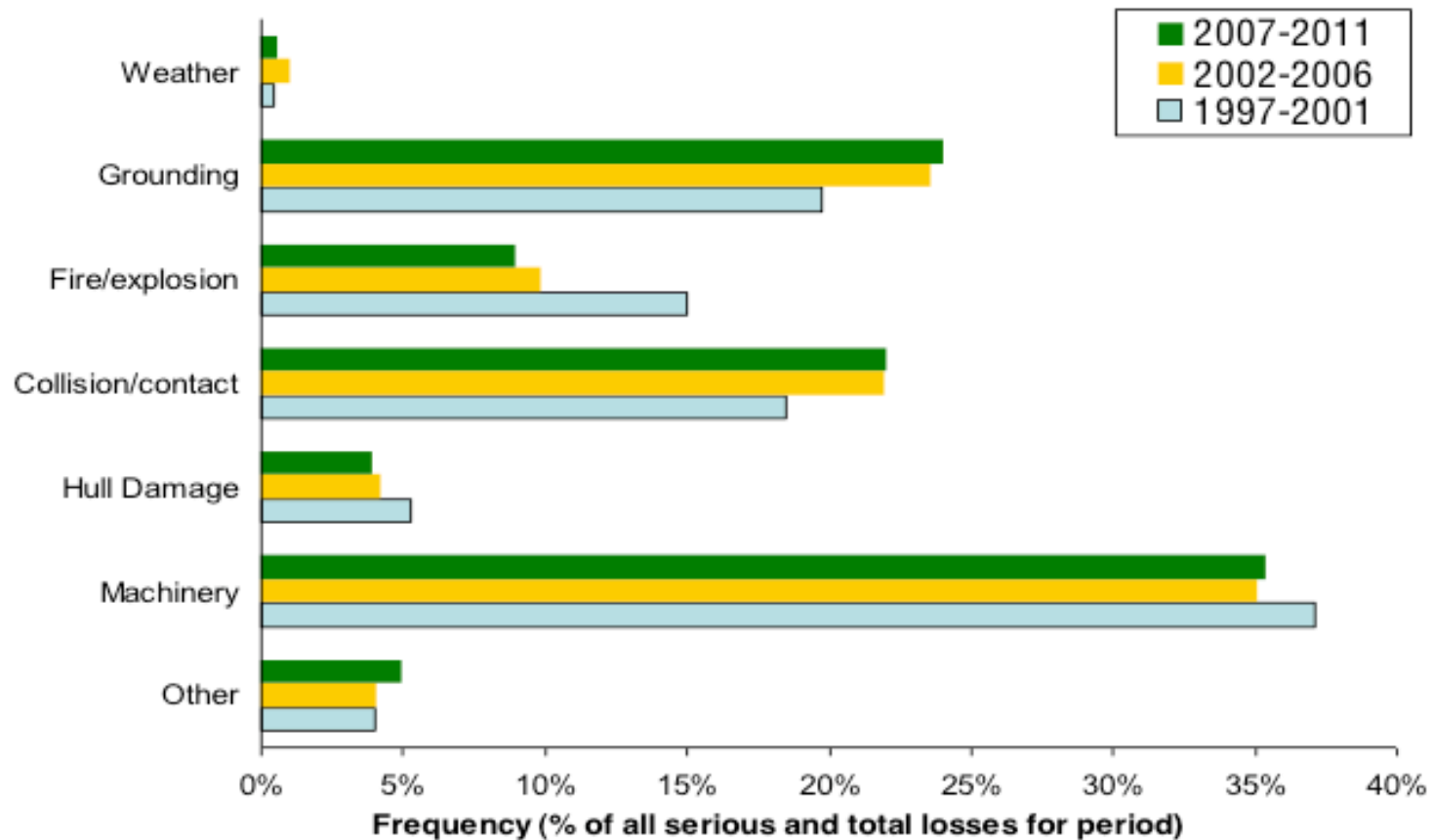
Source: LMIU, total losses as reported by Lloyds List

## Serious Losses 1997 - 2011

By Cause, All Vessel Type  
(vessels > 500 GT)



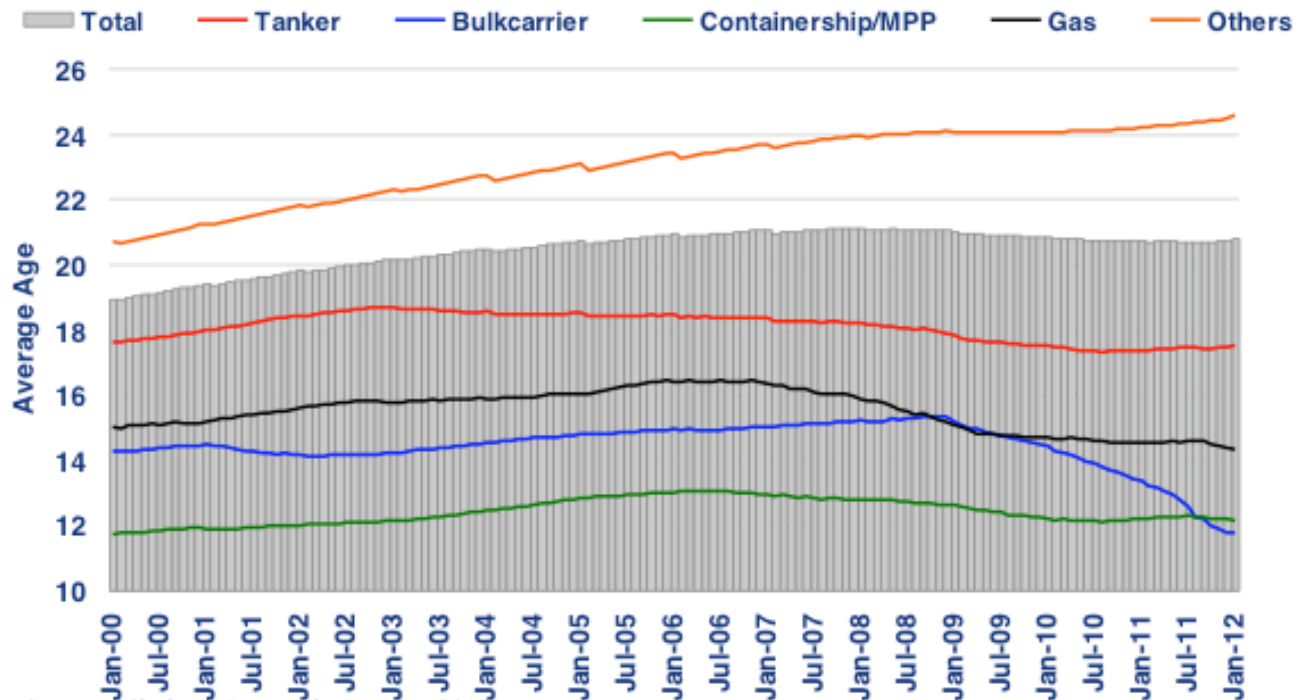
IUMI  
International Union of  
Marine Insurance



Source: LMIU, total losses as reported by Lloyds List



## Average Age of the World Fleet



Source: Clarkson Research, January 2012.

Note (1): Includes all vessels in these categories above 100 GT.

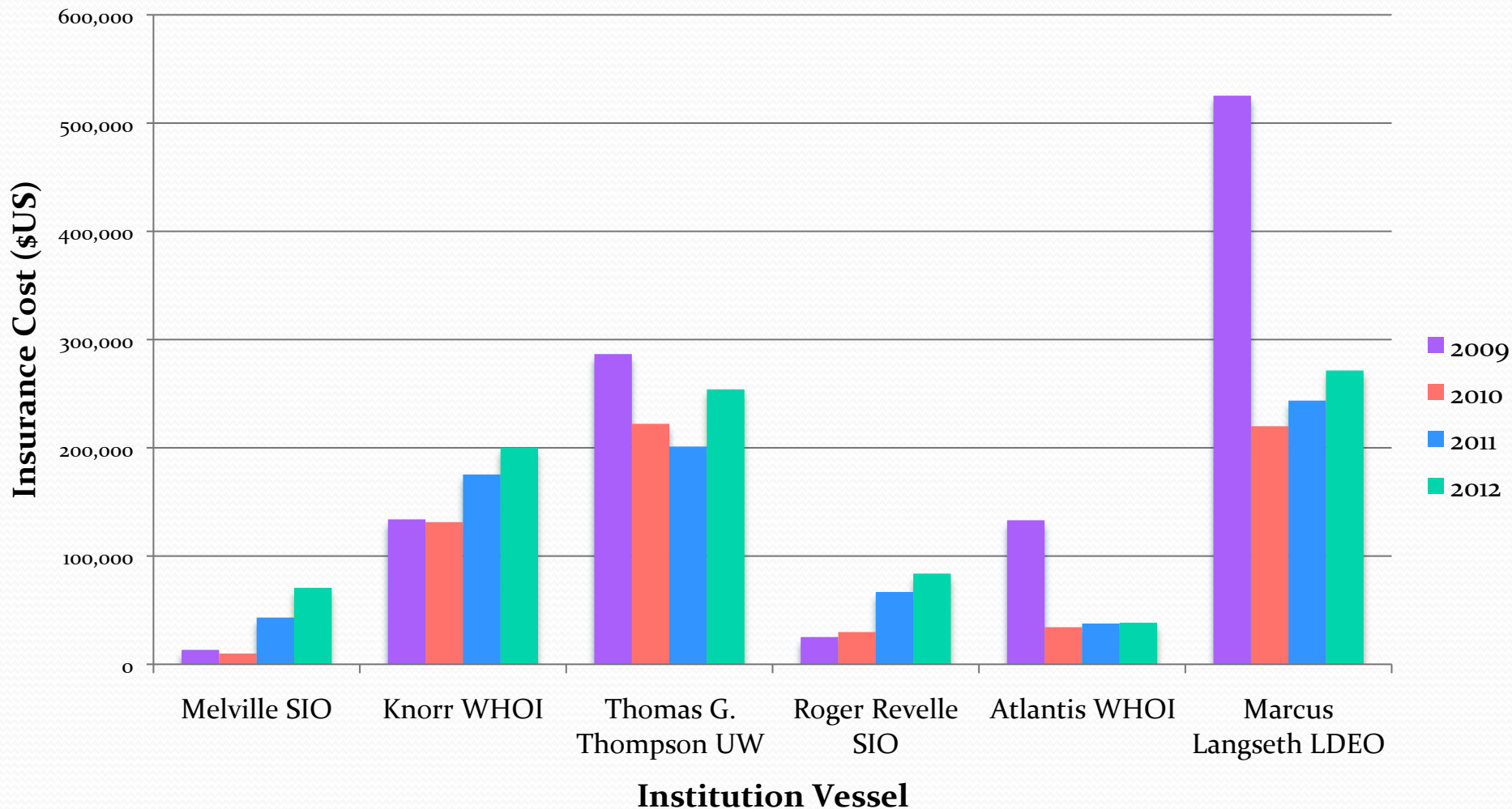
Note (2): Average age is calculated using number of vessels. Calculations are based on year and month of build.



# UNOLS Insurance

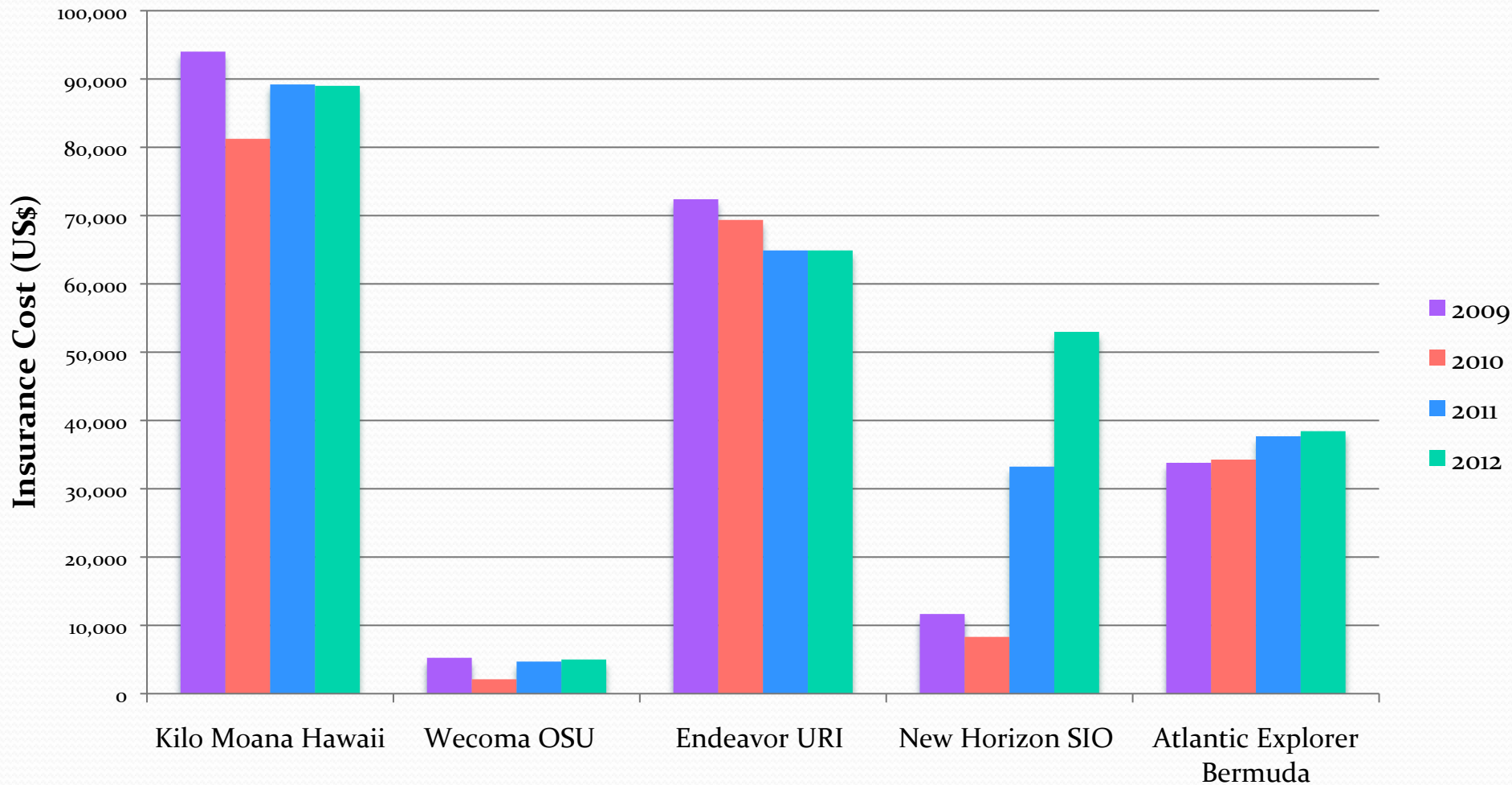
2013 RVOC Meeting, Solomons, Maryland

# 2009-2012 Insurance Costs: Global/Ocean



2013 RVOC Meeting, Solomons, Maryland

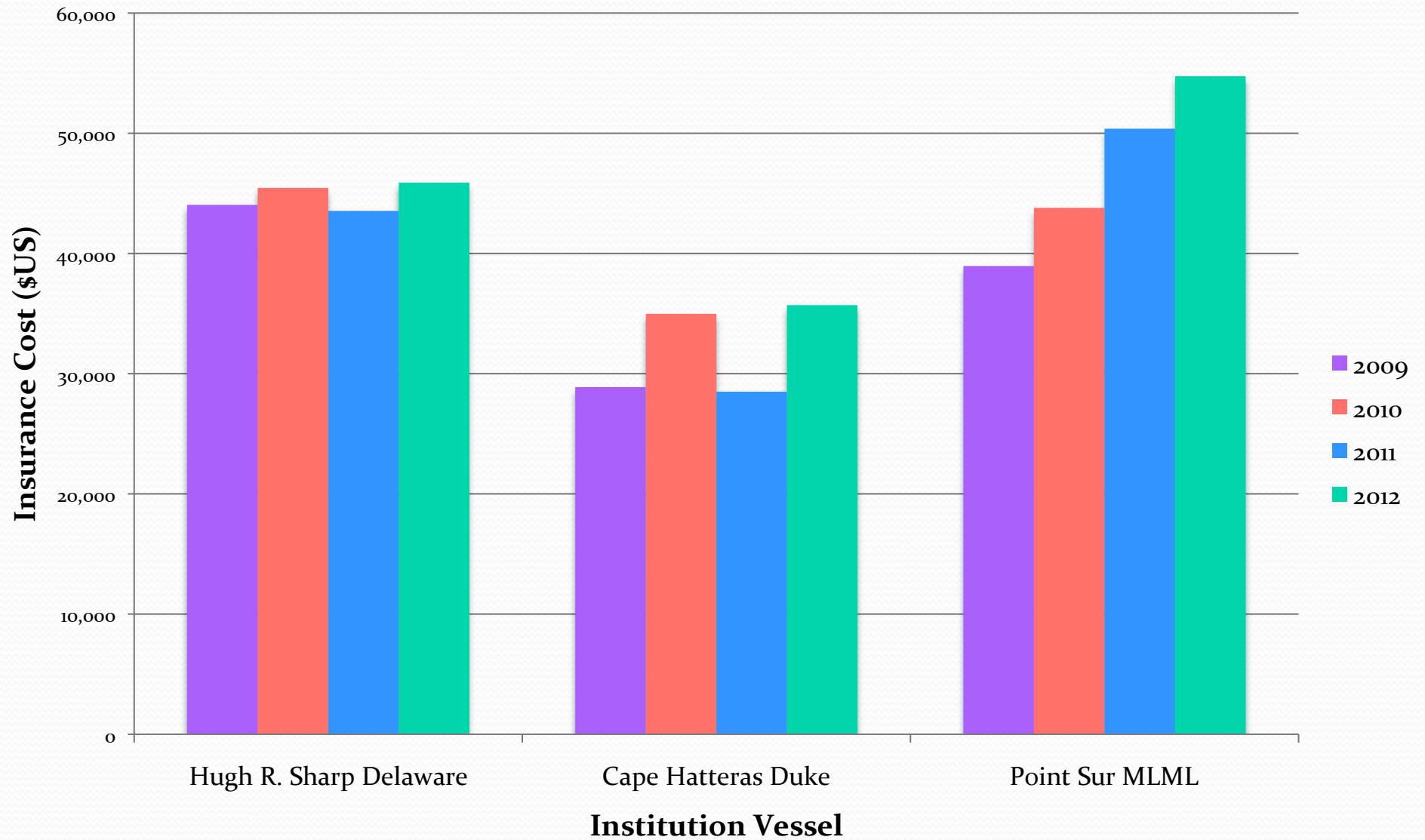
# 2009-2012 Insurance Costs: Ocean/Intermediate



**Institution Vessel**

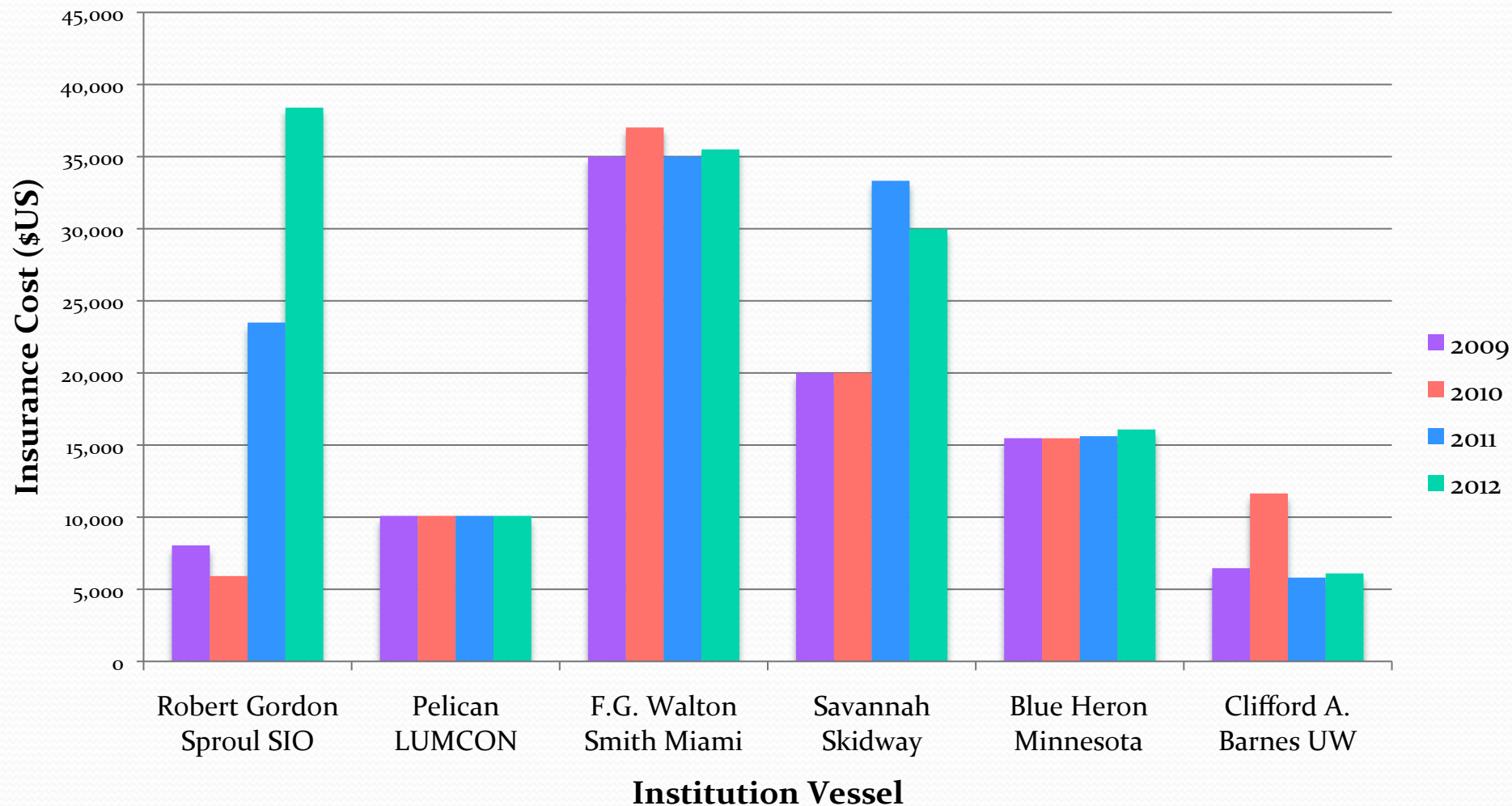
2013 RVOC Meeting, Solomons, Maryland

# 2009-2012 Insurance Costs: Regional

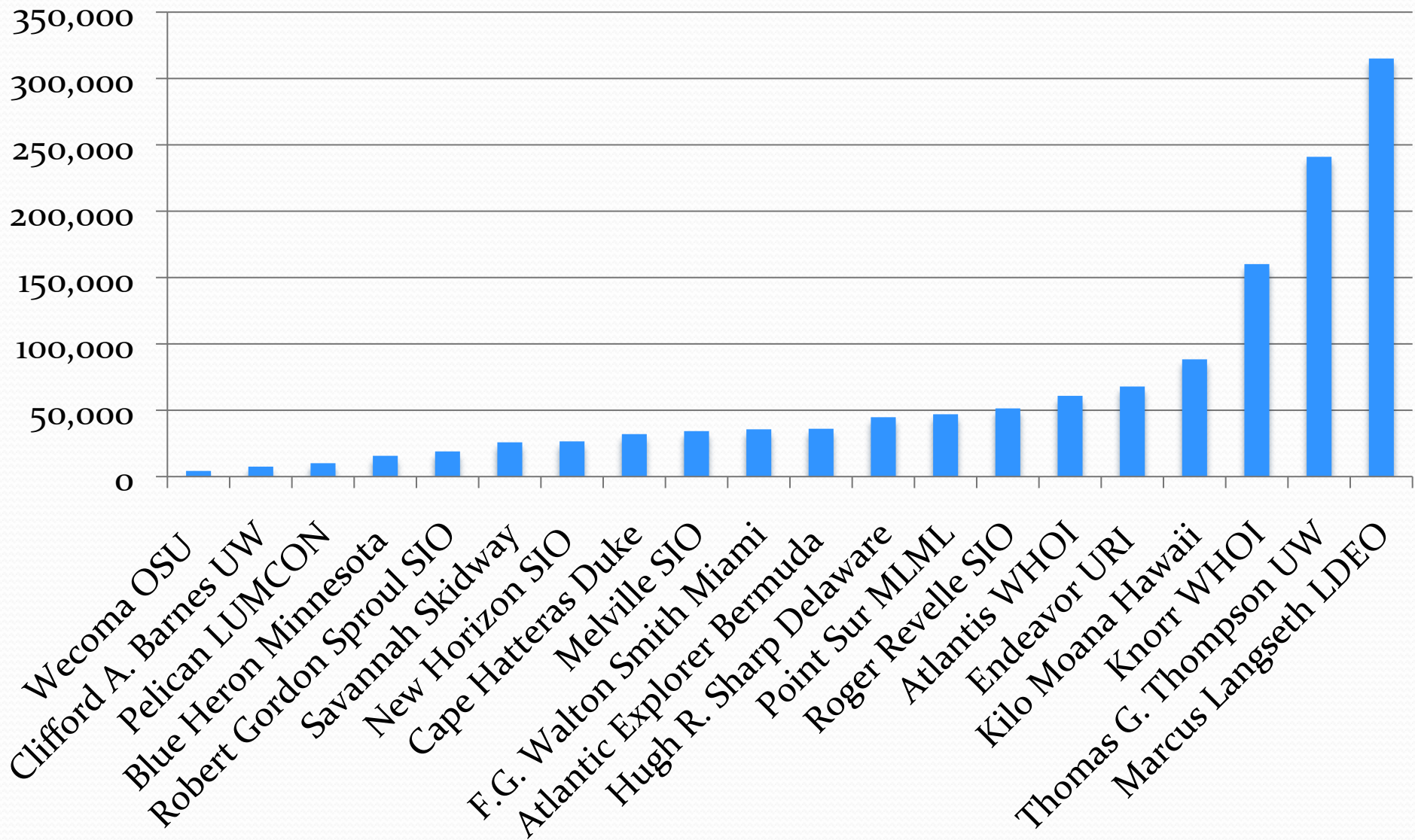


2013 RVOC Meeting, Solomons Island, Maryland

# 2009-2012 Insurance Costs: Coastal/Local



## 2009-2012 Insurance Costs: 4 Year Averages





# Relevant Vessel Casualties

2013 RVOC Meeting, Solomons, Maryland

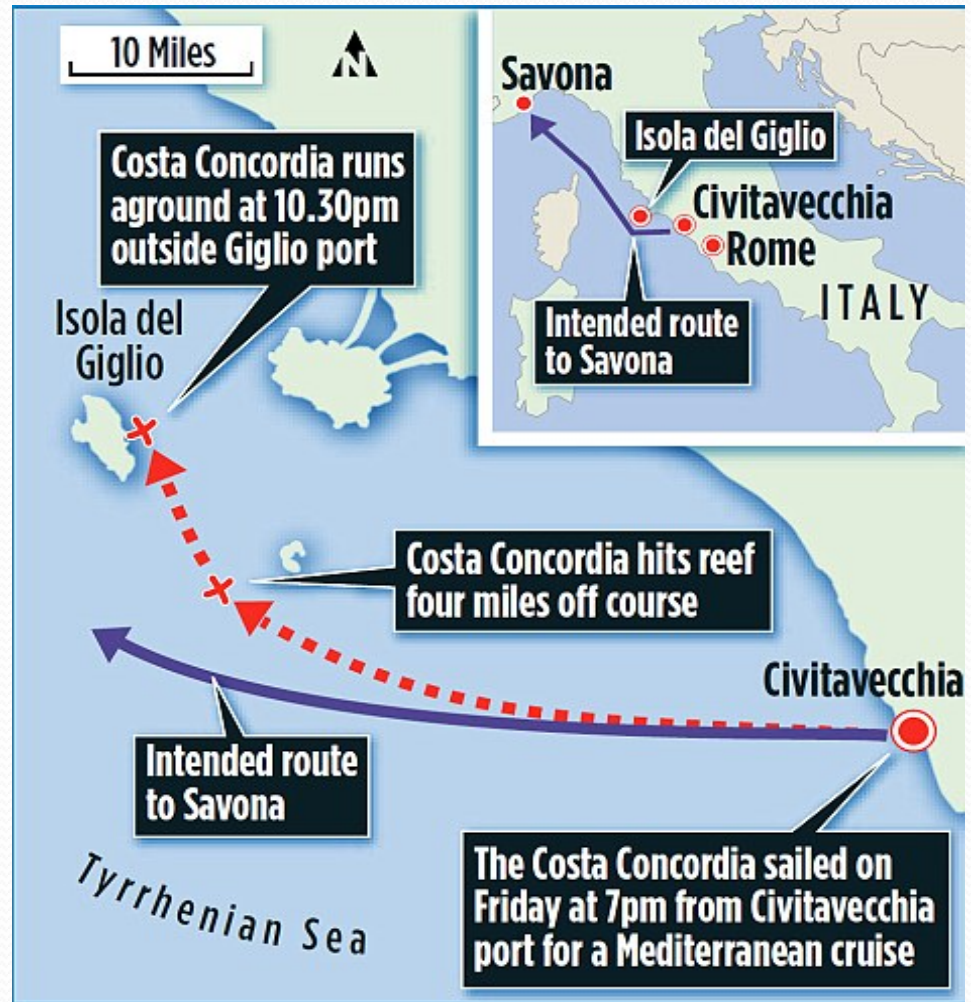
# Casualties: Costa Concordia

- January 13, 2012 – The cruise ship Costa Concordia partially sank after hitting reef off the Italian coast and running aground at Isola del Giglio, Tuscany, requiring the evacuation of the 4,252 people on board.
- After hitting the reef, the ship started to take in water, flooding the engine room and generators, causing the ship to drift for more than an hour off the eastern shore of Isola del Giglio before running aground and being evacuated.



# Casualties: Costa Concordia

- The captain deviated from the ship's computer-programmed route to treat people on Isola del Giglio to “the spectacle of a close sail-last or near-shore salute.”
  - He claims his bosses put him under intense pressure to sail the cruise ship close to Giglio island in order to present a spectacle to passengers.
- He delayed preparations to abandon ship, and the ship developed a list, both of which hindered eventual evacuation attempts.
- Soon after grounding, the ship listed more extremely, trapping people inside.



# Casualties: Costa Concordia

- The captain left the ship during the evacuation and did not re-board despite orders by maritime officials.
- Captain claims that the rocky islet that the ship smashed into was not marked by his electronic navigation systems. However, the rocky islet rises several feet out of the water and is clearly marked even on tourist maps of the island.
- Captain faces charges of causing a shipwreck, abandoning ship and multiple counts of manslaughter.





# Casualties: Costa Concordia

- Costa Concordia being compared to Titanic
- Sinking of the Titanic in 1912 resulted in the Safety of Life at Sea Convention
- What changes do you anticipate arising as a result of this casualty?



# Casualties: ECDIS assisted grounding

- CSL Thames runs aground, sustaining bottom damage
- ECDIS audible alarm was disconnected, unbeknownst to the crew
- The crew's lack of familiarity with the vessel's ECDIS system caused them to incorrectly program the system's safety contour setting

# Casualties: Hydrographic Survey Vessel Sinking

- Small hydrographic survey vessel, the Level A, of Hamburg University, capsized in the Rhine River after a collision with a self-propelled barge Deo Favente
- Well known hydrographer Dr. Volker Boder died from injuries suffered in the collision, and the captain's body was not recovered. The two remaining crew members survived
- Cause of the collision is still under investigation



# Sinking: RV Seaprobe

- January 18<sup>th</sup>, 2012 the 170-foot RV Seaprobe started taking on water 141 miles south of Pensacola, Florida



# Sinking: RV Seaprobe

- Coast Guard aircraft arrived on scene and found all 12 crewmembers on three life rafts tied together, all wearing life jackets, no casualties



2013 RVOC Meeting, Solomons, Maryland

# Sinking: RV Arluk

- Fish and Wildlife Service research vessel Arluk sank in St. Herman's Harbor, Kodiak, Alaska on February 8<sup>th</sup>
- A boom was deployed to minimize pollution
- The Coast Guard and salvage company Lazy Bay LLC are working to refloat the vessel



2013 RVOC Meeting, Solomons Island, Maryland



# Relevant Legal Cases and Issues

2013 RVOC Meeting, Solomons, Maryland



# Major Legal Cases

## **Surveyor Sent to Jail**

- U.S. v. Alejandro Gonzalez (2012)
- Gonzalez was sentenced to serve 21 months in prison for lying to the Coast Guard and falsely certifying the safety of ships at sea
- US Attorney Ferrer: “Ship surveyors serve a crucial public safety role, and when they abdicate their responsibility they put mariners in danger and our nation’s waters at risk.”



# Major Legal Cases

## **ABS Avoids Liability in Prestige Spill**

- Spain v. American Bureau of Shipping (2012)
- Spain sought to recover their cleanup costs and natural resource damages from ABS, arguing that they had failed in their duty to properly inspect the vessel
- The Second Circuit Court of Appeals found that Spain did not introduce sufficient evidence to prove that ABS had breached their duty



# Major Legal Cases

## **Transocean Denied Restitution of Maintenance and Cure for Sailor with Fraudulent Health History**

- Wallace Boudreaux v. Transocean Deepwater, Inc. (2013)
- Transocean sought to recover maintenance and cure costs paid to Wallace Boudreaux after they discovered his back injury was preexisting rather than sustained on the job
- The Fifth Circuit Court of Appeals reversed and held consistent with *Still*, that fraudulent misrepresentation of health history does not remove a seaman's right to maintenance and cure



# Major Legal Cases

## **Offshore Rig Welder Denied Emotional Distress Claim**

- Francis Barker, Jr. v. Hercules Offshore, Inc. et al. (2013)
- Barker claims to have suffered severe emotional distress after witnessing his friend and co-worker fall 100-feet into the ocean to his death and sought damages for negligence, gross negligence, and wanton disregard for safety under the Longshore and Harbor Workers Compensation Act and the Texas Tort Law
- Court held that Barker was not entitled to damages under Texas or maritime law



# Major Legal Cases

## Seismic Array Damaged in Collision

- The “Western Express”
- Gulf of Mexico accident litigated in British Admiralty Court
- Containership fails to keep clear of 5 mile seismic array, causing \$25 million in damages
- Court finds both vessels partially at fault
- Containership 66% for failing to keep clear of exclusion zone
- Seismic vessel 33% for failing to have second “picket vessel,” failure to issue repeated warnings on VHF, and failure to dive the gear when collision was imminent



# ITAR Update

- Problem
  - UNOLS vessels in the research fleet are carrying gravimeters on board
  - These gravimeters contain accelerometers which are on the US Munitions List and banned from export by ITAR
- Exemption
  - Office of Defense Trade Controls Policy advises that RV *Endeavor* is exempt from the export ban as long as it meets 22 CFR 123.11(b) regulations
  - 22 CFR 123.11 (b): Vessel or aircraft does not enter territorial waters or airspace if no defense articles are carried as cargo.



# Safety Issues

2013 RVOC Meeting, Solomons, Maryland

# Safety Issues

- Maersk halted all man overboard (MOB) drills on their container ships after a crewmember on the 93,496 ton Anna Maersk was killed in the Port of Kobe, Japan on March 28, 2012.
- A Filipino seaman died and a Danish officer suffered serious injuries when the lifeboat falls reportedly (unconfirmed) failed and the boat dropped into the water from a significant height.



# Casualties: Thomson Majesty

- The Cruise Lines International Association requires crews to conduct lifeboat launching and fully loading tests biannually for ships with crews of 300 or more
- Maltese flagged MS Thomson Majesty owned by Louis Cruises was in port at Santa Cruz de La Palma, Canary Islands conducting an emergency drill



# Casualties: Thomson Majesty

- During one of these tests 5 crew members were killed and 3 injured when a lifeboat fell 65 feet into the water and landed upside-down





# Conclusions

- Insurance Trends
  - The market is flat as a result of the economic recession and a decline in fleet casualties, but Costa Concordia will impact us all for years
  - Fleet insurance numbers remain relatively stable, with most differences resulting from claims history and institutional contributions
- Casualties and Legal Decisions
  - Despite increased regulations, training, and better equipment, the human element still results in casualties
  - The development of policy and technology will continue to improve the potential for a safer working environment for seafarers, but risk will always remain



Questions?